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MEMORANDUM

SUBJECT: Interim Guidance: Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements

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EPA believes that early and meaningful participation by a diverse, broad cross-section of the community results in better solutions to site cleanup issues. Independent technical advisors may enhance community participation by interpreting technical documents and providing insight into the Superfund process.

Several mechanisms exist for communities at Superfund sites to receive such assistance. These include EPA's Technical Assistance Grants (TAGs), the Agency's contract for Technical Assistance Services for Communities (TASC), and (for military sites) DOD's Technical Assistance for Public Participation (TAPP) program.¹ The purpose of this memorandum is to provide guidance on another mechanism, namely for Technical Assistance Plan (TAP) provisions in Superfund settlements.

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¹ For an overview of these and other technical assistance resources, see EPA's booklet, "Technical Assistance Resources for Communities," available at <http://www.epa.gov/superfund/action/communities/techasst.pdf>.

This memorandum provides an overview of how TAPs have typically been implemented to date as well as guidance to Regions on negotiating a settlement provision for a TAP. A TAP provision obligates a potentially responsible party (PRP), at EPA's request, to arrange at its own expense for a qualified community group to obtain the services of an independent technical advisor and to share information with others in the community. To date, EPA has negotiated TAP provisions in more than fifty CERCLA settlements. Based on this experience, sample documents are provided as appendices to this guidance to facilitate future TAPs.

I. Background

TAPs are consistent with, and effectively build on, other Superfund community involvement efforts. For example, the National Oil and Hazardous Substances Pollution Contingency Plan (commonly known as the NCP) tasks EPA with ensuring that communities have appropriate opportunities for involvement in many site-related decisions. *See, e.g.*, 40 C.F.R. §300.430(c). In cases where PRPs conduct the cleanup, the NCP provides for PRP participation in the community involvement program at EPA's discretion. *See* 40 C.F.R. §300.430(c)(3). In addition, both the model Consent Decree (CD) for Remedial Design/Remedial Action (RD/RA) and the model Administrative Order on Consent (AOC) for Remedial Investigation/Feasibility Study (RI/FS) contain provisions that obligate PRPs to support community involvement efforts.

Key to all of these efforts is for EPA and the PRPs to work together to facilitate the representation of the entire diversity of interests present in communities. The absence of such broad-based involvement increases the potential for divisiveness that can frustrate effective response actions. In the context of TAPs, ensuring inclusiveness is especially important given that the source of funding for the community assistance is the PRPs.

Most of the TAP provisions negotiated to date have been in settlements using the Superfund Alternative Approach (SAA). Before considering whether to use this approach in a particular settlement, a site team should review EPA's June 17, 2004, guidance, "Revised Response Selection and Enforcement Approach for Superfund Alternative Sites" (Revised SAA Guidance). EPA policy calls for TAP provisions in all SAA settlements for RI/FS, RD², or RD/RA. As explained in the Revised SAA guidance, the purpose of the TAP provision is to ensure that communities affected by settlements using the Superfund Alternative Approach have a technical assistance opportunity that is at least equivalent to the opportunities available to other communities.

² If the TAP provision is first negotiated in a settlement for RI/FS or RD, then it may be extended, if necessary, by a provision in the CD for RD/RA.

II. PRP Arrangements for Independent Technical Assistance

The discussion below provides an overview of the typical TAP process to date. In addition to the primary role played by the PRP in implementing TAPs, the members of the Regional site team (e.g., the lead EPA attorney, the Regional Project Manager (RPM), the On-Scene Coordinator (OSC), and the Community Involvement Coordinator (CIC)) play a role that is significant to the success of TAPs. Each member's respective role is discussed below.

A. Negotiating a TAP Provision

The lead EPA attorney is responsible for negotiating with the PRP the settlement language for a TAP provision. Model settlement language for the TAP provision in a settlement using the Superfund Alternative Approach is attached at Appendix 1.³ This model language provides that, upon a request from EPA, the PRP must submit a plan, known as a TAP, for a qualified community group to receive services from an independent technical advisor and to share information with others in the community. The provision also obligates the PRP to provide additional such assistance if the community group has demonstrated, pursuant to the terms of the settlement agreement, that site conditions warrant them and the funds already provided have been managed effectively.

The lead EPA attorney is also responsible for negotiating a TAP provision in the Statement of Work (SOW) associated with the agreement. Sample SOW language is attached at Appendix 2. The SOW typically mirrors the language from the agreement and is expanded to include details of the PRP's, EPA's, and the community group's TAP responsibilities. For example, the SOW should reiterate the PRP's agreement to provide and administer funding for technical advisor services to a qualified community group, to select a recipient group, to negotiate an agreement with the community group, and to submit quarterly progress reports to EPA.

The SOW is an appropriate place to detail the criteria for determining whether a community group is eligible to apply for TAP services. For example, an applicant should demonstrate that it represents the entire range of affected local interests (e.g., perhaps by being an umbrella coalition of groups). It must also be able to demonstrate its ability to adequately and responsibly manage TAP-related responsibilities. The eligibility criteria should also provide that an applicant is not eligible if it is established or supported by a PRP, a national organization, an academic institution, a political subdivision, or a tribal government.

In the TAPs implemented to date, the PRP's administrative burdens associated with a

³ This model language may be omitted or substantively modified only with the prior written approval of the Director of the Regional Support Division in EPA's Office of Site Remediation Enforcement (OSRE).

TAP have been relatively minimal, representing a fraction of the time and costs associated with the PRP's responsibilities in performing the response work. The model TAP provision is contingent on community interest; therefore, if no eligible community group expresses interest, then the PRP does not have to prepare and implement a TAP. The PRP generally does not have to prepare a TAP unless and until a community group has formally requested TAP assistance (i.e., submitted a Letter of Intent (LOI)) and the group is eligible, as defined by the terms of the settlement, to apply for TAP services. For some TAPs, case teams haven't required PRPs to prepare a TAP until later in the process, e.g., after the PRP has reviewed the community group's application (and any competing applications) and, pursuant to the criteria set forth in the settlement, selected the group that will receive the services. In other cases, case teams have required PRPs to prepare a TAP earlier in the process, e.g., prior to a formal LOI in cases where the PRP and EPA are already aware that a qualified community group plans to apply.

B. Interacting with the Community

Members of the Regional site team can play a valuable role with the PRP in educating the community about the availability of TAP services. In addition, if a Community Advisory Group (CAG)⁴ has already been organized for the site, then the CAG can also assist in this effort. During initial site interviews and through fact sheets, mailings and meetings, the CIC, RPM, and/or OSC should work with the PRP to inform the community about the availability of TAP assistance. The Region's Community Involvement Plan (CIP) for the site should also discuss the TAP.

A member of the Regional site team (likely the CIC) also should work with the PRP to ensure that interested community groups receive information regarding the TAP process (e.g., perhaps distribute the FAQs in Appendix 3) and encourage them to submit a Letter of Intent (LOI) to the PRP. A LOI typically includes a statement indicating the group's interest in a TAP as well as the group name, the site name, and the name, address, and daytime telephone number of a contact person. Once the PRP receives a LOI from an interested community group, it will publish notice in a local paper notifying other interested groups that they have a specified period of time (usually 30 days) to contact the first group and form a coalition with the intent of applying for the TAP jointly, or they may submit their own separate LOIs. EPA strongly prefers that the groups form a committee or coalition and apply together for the TAP since this will ensure that the community representation is broad-based and diverse.

Regardless of whether there is a single coalition applying or (much less favored) multiple groups submitting competing applications, each community group that timely submits a LOI to the PRP will be given a specified period of time (typically 30 days) to complete a Technical

⁴ A CAG is a group made up of representatives of diverse community interests. Its purpose is to provide a public forum for community members to present and discuss their needs and concerns related to the Superfund decision making process. For more information, see OSWER's guidance on CAGs. "Guidance for Community Advisory Groups at Superfund Sites," OSWER Directive 9230.0-28, December 1995..

Assistance Plan application (see Appendix 4 for sample application). The application asks for information about the group and its plans to work with a technical advisor and the community. In consultation with EPA, the PRP will evaluate each submitted application based on the criteria specified in the SOW associated with the settlement agreement. The criteria typically call, for example, for consideration of which group best represents those affected by the site. The PRP also evaluates each applicant's plans to work with a technical advisor and to educate others in the community, respectively, and its proposed system for managing TAP-related records. The PRP should complete its review of applications and its consultation with EPA within the specified period of time (typically 30 days). Before notifying the community groups of its selection decision, the PRP should notify the Region's site team and provide a final opportunity to review the PRP's evaluation process for compliance with the settlement criteria. After this EPA review, the PRP will promptly notify the group(s) of its decision, and then prepare a TAP.

C. Drafting and Approval of TAP

The TAP is a plan, submitted to EPA, which specifies a PRP's responsibilities to EPA and the community group during the TAP process. The Region can provide the PRP with a sample TAP, similar to the one in Appendix 5. In general, a TAP should include:

- A brief summary of the settlement agreement, the TAP language in the agreement, and the SOW associated with the agreement.
- A proposed plan for negotiating an agreement with the community group.
- A list of the PRP's major TAP duties, including, for example, arranging services for the community group and submitting quarterly progress reports to EPA.
- A schedule of anticipated milestones.

The Region should review the draft TAP submitted by the PRP and provide comments if necessary. EPA should provide written approval of the final document once the PRP has satisfactorily addressed any concerns raised by the Region during its review of the draft TAP.

D. Meeting with the Community Group

Soon after the PRP identifies the recipient group, it should meet with the group and Regional staff to discuss the TAP process. The PRP should ensure that the community group is knowledgeable about the TAP process and discuss such topics as:

- Services that will or will not be provided (as established under the TAP provision in its settlement with EPA).
- The community group's solicitation and selection of a technical advisor.
- Milestones in the Superfund process.

A community group should not advertise for or select a technical advisor until the group has been formally selected to receive TAP services and has met with the PRP and EPA. Due to ethical constraints, EPA employees are prohibited from sanctioning or endorsing any particular

product, service or vendor. 5 CFR 2635.702. Upon request, EPA may be able to provide the community group with a general range of prices that technical advisors have charged at other sites, without identifying the names of specific technical advisors or the sites involved. EPA may also be able to provide information on the skills and background (e.g., training in hydrogeology or soil chemistry) that a TA likely should have for a particular site.

EPA can assist the PRP in emphasizing the importance of using TAP services appropriately and explaining that the PRP may terminate the TAP if the community group misuses the TAP assistance. EPA can also assist the PRP in educating the community group about the availability of additional TAP assistance in certain circumstances as prescribed in the SOW. To apply for supplemental assistance, the community group would need to submit a completed request to the PRP. The group should document that the TAP services received thus far have been effective. In addition, the group must demonstrate that additional TAP assistance is appropriate based on the nature or volume of site-related information. Generally, the SOW will require that at least three of the following ten factors must be met:

- The RI/FS is particularly complex (for example, it will cost more than \$2 million);
- Treatability studies or evaluation of new and innovative technologies are required as specified in the Record of Decision (ROD);
- EPA has reopened the ROD;
- The site public health assessment (or related activities) indicates the need for further health investigations and/or health promotion activities;
- EPA designates one or more additional operable units after selection of the community group;
- EPA (or the state acting as lead agency) issues an Explanation of Significant Differences (ESD) for the selected remedy;
- A legislative or regulatory change has resulted in new site information;
- EPA expects the cleanup will last more than eight years from the beginning of the RI/FS through construction completion;
- Significant public concern exists, resulting in more meetings, copies, etc. than originally expected; and
- Other facts that, in EPA's judgment, indicate that the Site is unusually complex.

The PRP will consider the information in the request. Before notifying the community group of its decision, the PRP should notify the Region's site team and provide EPA an opportunity to review the PRP's evaluation process for compliance with the settlement criteria.

E. Community Group's Selection of its Technical Advisor (TA)

After meeting with the PRP and EPA, the selected community group will begin to solicit proposals from potential technical advisors. Generally, a community group should receive and evaluate information from at least three interested and qualified candidates. The community

group should provide relevant information to EPA (with a copy to the PRP) for an Agency determination on whether each candidate satisfies the requirements relating to qualifications and conflict of interest (COI). Again, EPA employees are bound by government ethical standards and thus cannot make any recommendations on which independent advisors to select. Instead, Regional personnel should merely review whether the candidates meet the standards for qualifications and COI. Following EPA's review, the group should notify the PRP (with a copy to EPA) of its preferred candidate. Unless the recommended technical advisor has a conflict of interest or does not meet the objective criteria outlined in the SOW, the PRP shall accept the community group's recommended candidate.

In most of the TAPs implemented to date, the technical advisor has signed an agreement with the community group, or with both the community group and the PRP. In one case, the TA and the PRP signed an agreement that benefits the community group but doesn't have the group as a signatory. The approach used must be consistent with the agreement and SOW terms. The agreement should provide that the technical advisor not begin work until an agreement has been signed. The agreement shall specify the TA's responsibilities for advising the community group and informing the group of potential conflicts of interest, as well as general matters, such as payment procedures and record retention practices. Both the PRP and EPA's RPM or OSC can assist the community group by providing a list of upcoming activities at the site and other information.

F. Agreement between PRP and Community Group

The SOW should provide that the PRP and community group enter an agreement detailing each party's responsibilities during the TAP process. Such agreements should likely cover:

- Each party's responsibilities, including, for example, the community group's responsibility to define the deliverables sought from its advisor, accepted and prohibited activities under a TAP provision, the community group's responsibility to share TA information with other members of the community, and any invoice and payment procedures.
- Dispute resolution procedures.
- TAP termination procedures.
- Any record retention practices.

Prior to signature, the agreement between the PRP and the community group should be reviewed and approved by the lead EPA attorney, especially in settlements using the SA approach.

In many of the TAPs implemented to date, the PRP and the community group have adopted a process wherein the community group submits invoices for services it has received from its technical advisor as well as invoices for expenses it has incurred directly (e.g., while

distributing information to others in the community), and the PRP reimburses the advisor directly for his/her services and the group for any eligible expenses of its own. In other TAPs, the community group never receives any monies from the PRP; it doesn't incur any reimbursable expenses on its own, and thus it merely reviews its advisor's invoices and forwards approved billings to the PRP. The PRP then pays the advisor directly. Finally, in yet other TAP cases, the parties have agreed that the PRP would provide the community group with set amounts of money as advance funding for TAP costs and that the community group would provide detailed records of how the money was subsequently spent. This last approach likely means that the community group must be incorporated in order to protect its individual members from liability for any fiscal mismanagement. To avoid the resource burden of such incorporation and recordkeeping, some groups avoid this approach. PRPs and community groups can decide which approach they prefer.

The community group may begin requesting specific reimbursable services from its TA once the advisor has signed an agreement. Appendix 6 contains a sample of a community group's request for specific tasks to be performed by its TA. The advisor would subsequently follow the invoice payment process previously agreed to by the PRP and the community group.

III. Conclusion

EPA believes that meaningful community participation results in better solutions to site cleanup issues. TAP provisions can provide communities with an opportunity for independent technical assistance. Members of a Regional site team must work closely with each other, the PRP, and the community group to ensure a successful TAP.

If you anticipate entering into a settlement of this type or if you have any questions about this guidance, please contact Mike Northridge (202-564-4263) of OSRE with settlement or enforcement issues or Freya Margand (703-603-8889) of OSRTI with community involvement issues.

Purpose and Use of this Guidance: This guidance and any internal procedures adopted for its implementation are intended exclusively as guidance for employees of the U.S. Environmental Protection Agency. This guidance is not a rule and does not create any legal obligations. Whether and how EPA applies the guidance will depend on the facts of the given site.

- Appendix #1: Model TAP Language for AOCs for RI/FS and CDs for RD/RA using the Superfund Alternative Approach
- Appendix #2: Sample Language for TAP Provision in Statement of Work in Settlements
- Appendix #3: Frequently Asked Questions about Technical Assistance Plans
- Appendix #4: Sample Application by Community Group for Technical Assistance Plan
- Appendix #5: Sample Language for a PRP's TAP

Appendix #6: Sample Directive by Community Group for Specific Tasks to be Performed by its Technical Advisor

Appendix #1

Model TAP Language for AOCs for RI/FS and CDs for RD/RA using the Superfund Alternative Approach (SAA)

This language replaces and supersedes the model language on page 8 of EPA's guidance, "Revised Response Selection and Settlement Approach for Superfund Alternative Sites," 6/17/2004, OSWER Directive #9208.0-18. Similarly, it also replaces and supersedes the TAP language in EPA's Model Administrative Order on Consent for Remedial Design (January 2005).

RI/FS

For AOCs using the SA approach, Regions should modify paragraph 34.b. of Section VIII of the Model AOC for RI/FS as set forth in the italicized language below.

B. Task II: Community Relations Plan *and Technical Assistance Plan*. EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondent(s) shall provide information supporting EPA's community relations programs. *When requested by EPA, Respondent(s) also shall provide EPA with the following deliverable:*

- I. Technical Assistance Plan: Within 30 days of a request by EPA, Respondent(s) shall provide EPA with a Technical Assistance Plan (TAP) for arranging (at Respondents' own expense, up to \$50,000) for a qualified community group: (1) to receive services from [an] independent technical advisor[s] who can help group members understand Site cleanup issues, and (2) to share this information with others in the community during the Work conducted pursuant to this Consent Order. The TAP shall state that Respondent(s) will provide and arrange for any additional assistance needed if the selected community group demonstrates such a need as provided in the SOW prior to EPA's issuance of the ROD contemplated by this Order. If EPA disapproves of or requires revisions to the Respondent(s)' draft TAP, in whole or in part, then Respondent(s) shall amend and submit to EPA a revised TAP that is responsive to EPA's comments, within __ days of receiving EPA's comments.*

RD/RA

If necessary, Regions should modify paragraph 117 in Section XXX, "Community Relations," of the Model CD for RD/RA:

Within 30 days of a request by EPA, Settling Defendants also shall provide EPA with a Technical Assistance Plan (TAP) for arranging (at Settling Defendants' own expense, up to \$50,000) for a qualified community group: (1) to receive services from [an] independent technical advisor[s] who can help group members understand Site cleanup issues, and (2) to share this information with others in the community during the Work conducted pursuant to this Consent Decree. The TAP shall state that Settling Defendants will provide and arrange for any

additional assistance needed if the selected community group demonstrates such a need as provided in the SOW. Upon its approval by EPA, the TAP shall be incorporated into and become enforceable under this Consent Decree.

Appendix #2

Sample Language for TAP Provision in Statement of Work in Settlements

The sample language is structured for use in a Statement of Work for PRP-Conducted RI/FS using the SA approach. The non-italicized text represents relevant excerpts from EPA's model Statement of Work for PRP-Conducted RI/FS (OSWER Directive 9835.8, dated June 2, 1989; <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/guide-risk-rpt.pdf>).

The italicized text is the additional language that case teams should consider adding. A region should modify this language as appropriate when including it in a CD for RD/RA.

Task 1 - Scoping. ...

Task 2 - Community Relations *and Technical Assistance*.

The development and implementation of community relations activities are the responsibility of EPA. The critical community relations planning steps performed by EPA include conducting community interviews and developing a community relations plan. Although implementation of the community relations plan is the responsibility of EPA, the Respondent, *if directed by EPA, shall* assist by providing information regarding the site's history, participating in public meetings, or by preparing fact sheets for distribution to the general public. In addition, the Respondent may *be directed by EPA to* establish a community information repository, at or near the site, to house one copy of the administrative record. The extent of the PRP's role in community relations is left to the discretion of EPA. The Respondent's community relations responsibilities, if any, are specified in the community relations plan. All PRP-conducted community relations activities will be subject to oversight by EPA.

In addition to the community relations activities, within 30 days of a request by EPA, Respondent shall provide EPA with a Technical Assistance Plan (TAP) for arranging (at Respondent's own expense, up to \$50,000) for a qualified Community Group to receive services from an independent technical advisor and to share this information with others in the community during the Work conducted pursuant to this Consent Order. Respondent also will provide and arrange for any additional assistance needed if the Community Group demonstrates such a need prior to EPA's issuance of the ROD contemplated by this Order. The Community Group will use this assistance:

(1) To obtain the services of a technical advisor(s), independent from the Respondent, who can help group members understand Site cleanup issues. The technical advisor(s) will help interpret and comment on Site-related documents developed under this SOW and through EPA's issuance of the Record of Decision (ROD) based upon the RI/FS conducted pursuant to this SOW.

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(2) To share this information with others in the community.

a. Criteria for a Qualified Community Group

To be eligible for TAP assistance, a Community Group shall be: 1) comprised of people who are affected by a release or threatened release at the Site and 2) able to demonstrate its ability to adequately and responsibly manage TAP-related responsibilities. A group is ineligible if it is: 1) a potentially responsible party (PRP) at the Site, represents such a PRP, or receives money or services from a PRP (other than through the TAP); 2) affiliated with a national organization; 3) an academic institution; 4) a political subdivision; 5) a tribal government; or 6) a group established or presently sustained by any of the entities listed above or if members of the group represent any of these entities.

If more than one eligible group applies in a timely manner, then their applications should be evaluated according to: 1) which group is more representative of those most affected by the site; 2) each group's proposed system for managing TAP-related responsibilities, including its plans for working with its technical advisor and for sharing site-related information with other members of the community. TAP assistance may be awarded to only one qualified group at a time for purposes of this Consent Order and Statement of Work.

b. EPA's Responsibilities relating to the TAP

EPA should ensure that its Community Relations Plan for the site includes a discussion of the TAP. EPA shall coordinate with the Respondent in soliciting interest in the TAP from community groups. If there are multiple interested groups, then EPA shall coordinate with the Respondent in encouraging the groups to submit a joint application in order to better represent the community. In its sole discretion (ordinarily not until receipt of a Letter of Intent (LOI) to apply from a community group that appears eligible), EPA may request that Respondent prepare a TAP. EPA will review the Respondent's draft TAP and either approve it, disapprove it, or require revisions. EPA will oversee the Respondent's implementation of the TAP. This includes Agency monitoring of the Respondent's solicitation of applications from community groups, its determination of groups' eligibility, and its review of applications. If Respondent and the selected community group opt to negotiate an agreement, EPA will review a draft of the agreement and provide comments. EPA will also oversee the Respondent's evaluation of any request by the selected community group for additional assistance beyond the initial \$50,000.

c. Respondent's Responsibilities relating to the TAP

Upon request by EPA, Respondent shall coordinate with EPA in soliciting interest in the TAP from community groups. If there are multiple interested groups, then Respondent shall coordinate with EPA in encouraging the groups to submit a joint application in order to better represent the community. Upon request by EPA,

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Respondent shall draft a TAP consistent with this SOW, related Consent Order, and relevant EPA policy and guidance. Within ___ days of EPA's request, Respondent will submit a draft TAP for EPA's review and approval. If EPA disapproves of or requires revisions to the TAP, in whole or in part, Respondent shall amend and submit to EPA a revised TAP that is responsive to EPA's comments, within ___ days of receiving EPA's comments. Once approved, Respondent will implement the TAP.

After EPA approves the TAP, Respondent shall arrange for publication of a notice in local media that a Letter of Intent (LOI) to submit an application for TAP assistance has been received. The notice should explain how other interested groups could also try to combine efforts with the LOI group or else submit their own applications, by a reasonable specified deadline.

Respondent shall review the application(s) received and determine the Community Group's eligibility pursuant to the criteria in section a. above. Respondent shall notify EPA of its determination on eligibility to ensure that it is consistent with the settlement before notifying the group(s). If more than one eligible group applies in a timely manner, then the Respondent shall review each application and evaluate them according to the criteria specified in section a. above. Respondent shall document its evaluation and its selection of a qualified Community Group. It should brief EPA, which will determine if the Respondent's evaluation process satisfactorily followed the settlement criteria. Respondent will subsequently notify the applicant(s) about its decision.

Respondent shall designate a point of contact to be the primary contact with the selected Community Group within 15 days of any EPA request for such a designation. The point of contact also may respond to the public's inquiries and questions about the TAP and/or any other aspect of the Site. The Respondent may hire a third party to act as the point of contact. If the Respondent opts to hire a third party, it shall submit in writing that person's name, title, and qualifications to EPA within 15 days of EPA's request for a TAP.

Respondent shall negotiate an agreement with the selected Community Group that specifies the duties of Respondent and Community Group, respectively. As part of the negotiations, Respondent shall inform the selected group of the activities that it can and cannot receive or undertake pursuant to the TAP. The list of allowable activities should generally be consistent with 40 CFR 35.4070 (e.g., obtaining the services of an advisor to help the group understand the nature of the environmental and public health hazards at the site and the various stages of the response action, and, to a lesser extent, communicating site information to others in the community), and the list of prohibited activities should generally be consistent with 40 CFR 35.4075 (e.g., activities related to litigation, political lobbying, etc).

The agreement shall also provide that Respondent's review of the Community Group's recommended choice for Technical Advisor will be limited, consistent with 40 CFR 35.4190 and 35.4195, to criteria such as whether the advisor has relevant

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knowledge, academic training, and experience as well as the ability to translate technical information into terms the community can understand.

The agreement shall also establish the process for the Community Group to seek additional TAP assistance, pursuant to the criteria specified below. Respondent shall submit the draft agreement to EPA for its review.

Respondent shall review any request from the selected Community Group for additional TAP assistance, consistent with the criteria specified in 40 CFR 35.4065, as follows:

- A) The Community Group must demonstrate that it has effectively managed its TAP responsibilities to date; and*
- B) The Community Group must show that at least three of the ten factors below are met:*
 - a. EPA expects that more than eight years (beginning with the initiation of the RI/FS) will pass before construction completion will be achieved;*
 - b. EPA requires treatability studies or evaluation of new and innovative technologies;*
 - c. EPA reopens its Record of Decision;*
 - d. After the PRP's selection of the Community Group, EPA designates additional Operable Units;*
 - e. EPA issues an Explanation of Significant Differences for its ROD;*
 - f. After the PRP's selection of the Community Group, a legislative or regulatory change results in significant new site information;*
 - g. Significant public concern about the site exists, as evidenced, e.g., by relatively large turnout at meetings, the need for multiple meetings, the need for numerous copies of documents to inform community members, etc.;*
 - h. Any other factor that, in EPA's judgment, indicates that this Site is unusually complex;*
 - i. A Remedial Investigation/Feasibility Study costing at least \$2 million is performed;*
 - j. The public health assessment (or related activities) for the site indicates the need for further health investigations and/or health-related activities.*

If the Community Group demonstrates a need for additional TAP assistance, then Respondent will arrange to provide the additional services or monies needed. Any unobligated TAP funds shall be retained by the Respondent upon EPA's issuance of the ROD.

The TAP shall state that the Respondent shall provide EPA quarterly progress reports regarding the implementation of the TAP.

Task 3 - Site Characterization. ...

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Task 4 - Baseline Risk Assessment. ...

Task 5 - Treatability Studies. ...

Task 6 - Development and Screening of Remedial Alternatives. ...

Task 7 - Detailed Analysis of Remedial Alternatives. ...

Appendix #3

Frequently Asked Questions about Technical Assistance Plans

What is a Technical Assistance Plan (TAP)?

Through a TAP, a potentially responsible party (PRP) agrees to provide (at its own expense) a qualified community group with assistance: (1) to receive services from an independent technical advisor(s) who can help group members understand site cleanup issues, and (2) to enable the group to share this information with others in the community.

How much assistance is provided for a technical advisor's services?

Assistance of up to \$50,000 may be available. The majority of the assistance should be used to pay for the technical advisor's services. In limited circumstances, additional assistance may be available in excess of this \$50,000 amount. No more than one community group will be selected to be a TAP recipient at a site at a time.

Is TAP assistance available at my site?

It depends on EPA's settlement with the PRP at your site. If your site has a settlement following the Superfund Alternative Approach (SAA), then TAP assistance will likely be available. EPA policy provides for the use of this approach in settlements at sites that are eligible to be listed on the National Priorities List (NPL) but are being addressed by PRPs without listing. The SA Approach is intended to result in cleanups equivalent to cleanups at NPL sites. On occasion, EPA also negotiates the inclusion of TAP provisions in settlements not using the SA Approach.

Can my group receive TAP assistance?

Your group may qualify for TAP assistance if: (1) your members are people affected by the site and (2) you can demonstrate the ability to adequately and responsibly manage TAP responsibilities. A group may not be:

- A PRP for the site, represent a PRP, or receive money or significant services from a PRP (other than through a TAP).
- Affiliated with a national organization.
- An academic institution (e.g., colleges, universities, high schools).
- A political subdivision (e.g., a township or municipality).
- A tribal government.
- Established or sustained by any of the entities listed above or have members that represent any of the entities listed above.

What types of service can a technical advisor provide?

A technical advisor can help the community better understand and be aware of information, options and decisions to be made in cleaning up the site. A technical advisor may:

- Review preliminary site assessments and site investigation data.
- Participate in community meetings to help interpret technical information.
- Visit the site to observe progress and provide technical updates to the group.
- Evaluate future land use options based on assumptions in the remedial investigation.
- Interpret information on environmental and public health hazards at the site.
- Communicate with the local community through websites, newsletters, community meetings or similar activities to improve understanding of conditions and activities at the site.

Is there anything the TAP cannot be used for?

TAP assistance cannot be used for the following purposes:

- Developing new information (e.g., conducting testing and monitoring activities).
- Activities related to lawsuits or other legal actions, or for attorney fees.
- Group members' travel or tuition/training expenses.
- Political activity and lobbying.
- Group activities such as parties and celebrations.
- Reopening or challenging final EPA decisions.

Depending on a particular site's circumstances, EPA's settlement with the PRP may identify additional activities that are not eligible for TAP assistance. A community group may not request TAP assistance for ineligible activities, and will not be reimbursed for any such costs. Moreover, EPA may approve the PRP's request to cancel TAP assistance if a community group misuses TAP funds.

What are my group's responsibilities if we are selected to receive TAP assistance?

If your group receives TAP assistance, some of the activities your group will be responsible for include:

- Soliciting proposals from potential technical advisors.
- Entering into an agreement with the PRP (and, where appropriate, with the group's technical advisor).
- Managing the technical advisor's activities and invoices.
- Working out an invoicing and expenses arrangement with the PRP.
- Possibly providing periodic reports on the group's activities.
- Sharing community concerns and questions with EPA and the PRP.
- Keeping the community informed about the technical advisor's work.

How do I apply to receive TAP assistance?

To apply for TAP assistance, a community group must:

- 1) Send the PRP (copying EPA) a letter of intent (LOI) with the group name, the site name, and the name, address, and daytime telephone number of a contact person. Note: Once the PRP receives a LOI from an interested community group, the PRP will arrange for publication of a notice in a local paper notifying other interested groups that they have a specified period of time (usually 30 days) to submit their own LOI. If more than one group expresses interest, then the PRP and EPA will encourage the groups to consider submitting a joint application.
- 2) Complete and submit a TAP application within the specified time period (usually 30 days). The application will include detailed information about the group and its plans to work with a technical advisor(s) and the community.

How is a group selected?

The PRP evaluates each application and considers, for example, whether the group represents those most affected by the site and has a system for managing its TAP responsibilities. The PRP also evaluates the group's plans to work with a technical advisor and to educate others in the community. The group is notified about the PRP's decision within 30 days of submitting its application.

Appendix #4

Sample Application by Community Group for Technical Assistance Plan

TECHNICAL ASSISTANCE PLAN APPLICATION	
1. Site Name and Location	2. Date
3. Community Group Name	
4. Relationship with Other Entities Is your group part of, established by, or supported by, or do any of your members represent the following: A PRP for the site? No <input type="checkbox"/> Yes <input type="checkbox"/> A national organization? No <input type="checkbox"/> Yes <input type="checkbox"/> A political subdivision (for example, a township or municipality)? No <input type="checkbox"/> Yes <input type="checkbox"/> An academic institution (for example, a university, college or high school)? No <input type="checkbox"/> Yes <input type="checkbox"/> A tribal government? No <input type="checkbox"/> Yes <input type="checkbox"/>	
Explain any "Yes" answers to item 4. Attach extra pages as necessary to explain any answer.	
5. Group Organization How is your group organized (e.g., do you have a president, vice president, etc.)? How many members do you currently have?	

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6. Relationship to Site

How have your group members been affected by the contamination at the site?

7. Prior Involvement

Has your group been involved at the site? If so, how?

8. Group Contact Person

Name

Telephone Number

Address

Email

9. Information Sharing

Describe the steps your group will take to share information with other community members. How will you ensure that other community members' concerns are shared with the PRP and EPA?

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10. Technical Advisor Services

State your group's anticipated projects to increase understanding and participation in the cleanup process. Please include:

1. Anticipated tasks the technical advisor will do (for example, review reports or participate in meetings).
1. Estimated time the technical advisor will spend on each task.
2. Expected work product from the technical advisor (for example, memos, reports, and newsletters).
3. How the community group expects to work with the technical advisor.

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11. Estimated Budget

Groups should review the handout titled, “Frequently Asked Questions about the Technical Assistance Plan,” which explains generally the expenses that cannot be paid for with TAP assistance. A community group will not be reimbursed for these costs, and EPA may approve a PRP’s request to cancel TAP assistance if a community group misuses TAP funds.

Budget Category	Task & Deliverables	Estimated Hours	Estimated Costs
<i>Technical Advisor</i>			
<i>Community Outreach</i>			

12. Certification

The undersigned certifies that to the best of his or her knowledge and belief that the information on this application is true and correct. A false statement on this form may be grounds for rejection of this proposal or termination of the TAP services. He/she understands that the PRP, with EPA’s permission, may request additional information about the community group.

Signature

Print Name

Date

Date Received

Appendix #5

Sample Language for a PRP's Technical Assistance Plan (TAP)

TECHNICAL ASSISTANCE PLAN (TAP)

[SITE NAME]

[Submitted by Respondent]

I. Background

[In this section, the Respondent should give a brief summary of the settlement similar to the example below. The summary should discuss the settlement provision containing the Respondent's obligation to arrange for independent technical assistance for the community, as well as the settlement provision prescribing the process to be followed in resolving any dispute between EPA and the Respondent relating to this obligation. It is also advisable that the Respondent discuss generally the role that EPA will have in overseeing this obligation.]

On *[insert date]*, the United States Environmental Protection Agency (EPA) finalized an Administrative Order on Consent with Respondent for a Remedial Investigation/Feasibility Study of contamination at the Site. As part of this AOC, Respondent agreed to provide and administer a plan for arranging (at its own expense, up to \$50,000) for a qualified community group to receive services from independent technical advisor(s) and information sharing during the execution of the RI/FS through to EPA's issuance of a Record of Decision. If the Community Group demonstrates a need for additional assistance during this time period (consistent with the requirements in the SOW), then Respondent will provide additional funding and arrange for such additional assistance. Upon EPA's issuance of the ROD, any unobligated technical assistance funds shall be retained by Respondent. (Depending on status of the group's efforts and any EPA settlement negotiations for the Respondent to implement the remedy selected in the ROD, Respondent may consider options for continuing the TAP arrangement until such remedy negotiations are completed.)

The Community Group selected to receive TAP assistance will be responsible for selecting and managing a Technical Advisor (TA). The TA will be independent from Respondent *[and any other PRPs connected to the Site]* and will provide information to the Community Group to aid its understanding of the significance of the data generated during the RI/FS through to ROD issuance. As with all of the activities undertaken by Respondent at this Site, EPA will oversee Respondent's administration of this Technical Assistance Plan (TAP) to ensure that it is consistent with the protocol provided in the AOC.

II. Agreement with Community Group and its TA

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Pursuant to the AOC, Respondent has attached a draft agreement to this TAP. After review and comment by EPA, Respondent agrees to submit this agreement to the Community Group selected to receive TAP services. This agreement addresses the services that will and will not be paid for through the TAP program; the proposed system for paying for TAP services (i.e., an invoice/billing system); the dispute resolution process; and other necessary provisions that provide for the administration of this TAP consistent with the terms of the Consent Agreement that Respondent entered into with EPA.

Respondent must negotiate in good faith with the Community Group and make a good-faith effort to complete such negotiations no later than [*insert date*]. Upon completion of the negotiations but prior to signature, Respondent should provide the final agreement to EPA and explain any differences between the draft attached agreement and the final version.

III. Dispute Resolution

Respondent should attempt to resolve informally any issues concerning the use, administration, or payment of funds pursuant to this TAP, or the performance of other substantive provisions arising out of, or relating to this TAP. During such a process, Respondent shall, to the extent practicable, continue administering, managing, and providing the services required under this TAP that are not in dispute.

In the event Respondent and the Community Group cannot reach resolution on an issue concerning the use, administration, or payment of funds pursuant to this TAP, Respondent agrees to notify EPA of the dispute and to seek EPA's assistance to resolve it.

To the extent that issues or situations arise that are not specifically addressed by this TAP, Respondent agrees to refer these to EPA for guidance and must generally interpret and implement all provisions of this Agreement with the spirit and purpose of a TAP.

As provided in the AOC, EPA will maintain oversight authority over all aspects of this TAP to ensure good-faith compliance by Respondent.

IV. Additional TAP Activities

1. Respondent has designated [*insert contact name*] to act as a point of contact for TAP issues. [*Insert contact name*] shall serve as the primary contact with the selected Community Group and also may respond to the public's inquiries and questions about the TAP or other aspects of the Site's response action.

2. On a quarterly basis beginning [*insert date*], Respondent will send EPA quarterly progress reports on the administration of the TAP. These reports will include, at a minimum:

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- (a) The topics discussed at any recent meetings with the Community Group.
- (b) TAP services that have been or will be paid for by Respondent and the amount of remaining TAP funds still available.
- (c) A written statement identifying and describing the status of any disputes between the parties.
- (d) A brief schedule and agenda of upcoming activities, if any, relating to the TAP.

3. Pursuant to the Stipulated Penalties section of the AOC (section [insert]), Respondent will be subject to either applicable stipulated penalties for violations of this TAP and/or appropriate civil penalties pursuant to Section 122(l) of CERCLA.

V. Schedule

To the extent practicable, Respondent will make a good faith effort to comply with the schedule provided below. In the event that unforeseen developments delay implementation, Respondent must provide EPA with justification for the delay and as expeditiously as possible complete the outstanding activity.

- 1. [insert date]: Conference call between EPA and Respondent to finalize revisions to TAP.
- 2. [insert date]: Submission of final draft TAP to EPA.
- 3. [insert date]: Following EPA approval of final TAP, Respondent commences negotiations with Community Group regarding agreement.
- 4. [insert date]: Target date for Respondent to transmit tentative agreement with Community Group to EPA for its review.
- 5. [insert date]: Target date for Respondent's final agreement with Community Group. (Respondent concurrently notifies EPA of any differences between final agreement and draft agreement.)

IN WITNESS WHEREOF, the parties hereto have executed this TAP on the date specified below.

ATTEST:

Respondent:

Name/Title

Name/Title

Signature

Signature

Type/Print Name

Type/Print Name

Title

Title

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ATTEST:

Name/Title

Signature

Type/Print Name

Title

EPA

Signature

Type/Print Name

Title

Appendix #6

Sample Directive by Community Group for Specific Tasks to be Performed by its Technical Advisor

Request: Assist in the review and analysis of the Remedial Investigation at the
[*insert site name*].

Time allocation: 134 hours, including two trips (to EPA public meetings)

Specifics:

1. The TA's first task will be to review the RI work plan, sampling plan, and quality assurance and quality control plan. The [*community group title*] wants to ensure that adequate sampling is carried out and gauge the need for testing in areas not included in the RI work plan. No environmental measurements are to be taken by the TA. Special attention shall be given to how the PRP, pursuant to EPA oversight, plans to investigate [*insert specific site circumstance*]. From the evaluation, the TA shall prepare a memorandum for the community group's leadership so that this information can be relayed to the membership via the website and newsletter. EPA will decide whether to place the memorandum and newsletter in the information repository for the site.
2. The TA shall attend a proposed meeting scheduled for the start of the RI in [*insert town, state*], between community members and EPA personnel (and, if appropriate, PRP representatives). The TA shall prepare questions, and review and provide feedback on community group questions to be asked of EPA (and, if appropriate, PRP representatives) regarding sampling plans.
3. Upon completion of the RI report, the TA shall help the community group review the results. The TA also shall review the risk assessment. The TA shall prepare memoranda on both these documents as well as an overall RI evaluation report. The TA shall make the information available to the community group membership, via the website and newsletter, and to EPA (and, if appropriate, the PRP), which may place memoranda, reports, and newsletters in the information repository.
4. The TA will analyze the health assessment to ensure that public health is being considered adequately and will prepare a summary report on the potential health risks posed by the site and how EPA proposes to address these risks. The TA shall make the information available to the community group membership via the website and newsletter. The TA will complete a detailed analysis of the remedies outlined in the draft feasibility study and then brief the community group on its contents. Additionally, the TA will prepare a written report to aid the community group's preparation of public comments. This report will provide the TA's recommendations regarding the proposed cleanup measures.

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5. The TA will attend the public meeting to be held by EPA in [*insert town, state*] during the public comment period. The TA's primary responsibility will be to serve as a resource to the community group's spokespersons at the meeting, interpreting technical information and asking clarifying questions. (Subject to a separate directive in the future, the TA may be asked to attend other Site-related meetings (e.g., a meeting held by a Community Advisory Group (CAG) organized for this Site) and/or to visit the Site.)